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 Americans with Disabilities Advocates,
 RICHARD WHITEHURST and GEORGE S. LOUIE

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

AMERICANS WITH DISABILITIES
 ADVOCATES, a Nevada Nonprofit
 Corporation, RICHARD WHITEHURST and
 GEORGE S. LOUIE

Plaintiffs,

vs.

GARLAND HOTEL COMPANY DBA
 GARLAND HOTEL; UWE WELLHOFFER,
 505 O'FARRELL STREET, SAN
 FRANCISCO, CA AND ROBERT A
 PECHOULTRES EXEMPT TRUST, 2767
 OCTAVIA STREET, SAN FRANCISCO, CA

Defendants.

Case No.:

CIVIL RIGHTS

**COMPLAINT FOR VIOLATION OF CIVIL
 RIGHTS AND DISCRIMINATION
 AGAINST PERSONS WITH
 DISABILITIES; AMERICANS WITH
 DISABILITIES ACT OF 1990; CAL. CIVIL
 CODE §§54, ET SEQ.; CAL. CIVIL CODE
 §§51, ET SEQ.; CAL. CIVIL CODE
 §§3345; CAL. HEALTH & SAFETY CODE
 §§19955, ET SEQ.; CAL. ; NEGLIGENCE;
 DECLARATORY RELIEF; DAMAGES
 FOR PERSONAL INJURY**

DEMAND FOR JURY TRIAL

INTRODUCTION

1. Plaintiffs complain of Defendants herein and allege that:

1 AMERICANS WITH DISABILITIES ADVOCATES is a Nevada Nonprofit Corporation
2 organized with the principal purpose of helping to eliminate discrimination against individuals
3 with disabilities by ensuring public facilities are in compliance with laws intended to provide
4 access to housing, public buildings, transportation, goods and services and to make sure that
5 people with disabilities are treated with dignity.

6 In addition, AMERICANS WITH DISABILITIES ADVOCATES ensures that disabled
7 persons are offered the same opportunities extended to people without disabilities and helps to
8 educate persons with disabilities about the laws related to them.

9 Members of AMERICANS WITH DISABILITIES ADVOCATES are primarily
10 individuals with disabilities and persons related to individuals with disabilities. Membership
11 includes residents throughout the United States.

12 As a result of their disabilities, certain accommodations are necessary to allow
13 AMERICANS WITH DISABILITIES ADVOCATES members access to public buildings,
14 transportation, goods and services.

15 AMERICANS WITH DISABILITIES ADVOCATES is committed to serving the needs
16 of all disabled people and fully supports the Americans With Disabilities Act of 1990, California
17 Disabled Persons Act and Unruh Civil Rights Act.

18 AMERICANS WITH DISABILITIES ADVOCATES believes the goals and objectives
19 of these laws will enhance the quality of our society, that the American economy will be made
20 stronger by businesses that reach out to include all segments of the population, and that these
21 laws ultimately help to invigorate the economy by bringing more individuals with disabilities
22 into the consumer mainstream. It is also AMERICANS WITH DISABILITIES ADVOCATES'
23 belief that meaningful efforts to do so will offer many citizens more opportunities to participate
24 fully in the economic and social mainstream. There can be no question that the Americans With
25 Disabilities Act, passed in 1990, established as law the nation's interest in eradicating the bigotry
26 and barriers faced by individuals with disabilities 42 U.S.C. §12101 et seq (hereafter "ADA").
27 In fact, the ADA states its first goal as being "to provide a clear and comprehensive national
28 mandate for the elimination of discrimination against individuals with disabilities." See, 42

U.S.C. §12101 (b) (1) (1999). The ADA creates the possibility that successful Plaintiffs may establish permanent changes in the design and physical configuration of structures to better accommodate the disabled 42 U.S.C. §12101 (A) (5). The benefits of each change clearly rebound not only to Plaintiffs themselves, but also to similarly situated disabled persons, and the entire society at large. Plaintiffs or Plaintiffs' classes who bring suit pursuant to the ADA do so in the role of "private attorneys general" who seek to vindicate "a policy of the highest priority" See, Christiansburg Garment Co v EEOC, 434 U.S. 412, 417, 98 S.Ct. 694, 698 (discussing ADA Plaintiffs as private attorneys general); Rosenberg v Merrill Lynch, Pierce, Fenner & Smith, Inc., 170 F.3d 1, 11 (1st Cir, 1999).

GARLAND HOTEL COMPANY DBA GARLAND HOTEL; UWE WELLHOFER AND ROBERT A PECHOULTRES EXEMPT TRUST provides inadequate access to people with disabilities, including, inter alia: Inaccessible handicapped restroom facilities. There is no accessible route into the business due to steps (absolutely no handicapped accessible signage), a violation of ADAAG section 4.1.2(1) and Title 24 1107A.2.1. There are 2 steps leading into the facility. See Exhibit A, No accessible route into the business due to 2 steps leading into the facilities. Because of these barriers, entering this facility was impossible for persons with mobility disabilities, such as the Plaintiffs, to gain access to this facility.

JURISDICTION

This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. sections 1343(a)(3) and 1343(a)(4) for claims arising under the Americans With Disabilities Act of 1990, 42 U.S.C. sections 12101, et. seq. Plaintiffs' cause of action arose in this district. GARLAND HOTEL COMPANY DBA GARLAND HOTEL; UWE WELLHOFER AND ROBERT A PECHOULTRES EXEMPT TRUST are residents of SAN FRANCISCO , California.

Under the doctrine of pendant and supplemental jurisdiction, this Court has jurisdiction over Plaintiffs' claims arising under California State law.

VENUE

- a. There is no Accessible route into the business due to steps (absolutely no handicapped accessible signage), a violation of ADAAG section 4.1.2(1) and Title 24 1107A.2.1. There are 2 steps leading into the facility.
- b. Plaintiffs attempted to use the restroom and its facilities. Plaintiffs were unable to get their wheelchairs through the narrow doorways of the restroom because the doorway was too narrow to accommodate persons with disabilities, who use wheelchairs, and the restrooms were configured in violation of the requirements of the Americans With Disabilities Act of 1990, 42 U.S.C. Sections 12101, et. seq. and 28 C.F.R. Ch 1 (7-1-94 Edition) Sections 36.34 et. seq. On information and belief, the men's restroom is inaccessible to persons with disabilities and other aspects, including but not limited to the narrowness of the doorways lack of sufficient turning space adjacent to the sink, the lack of proper configured sink and hardware for the use by a disabled person who uses a wheelchair, lack of grab bars in the toilet stall; lack of a raised toilet seat; lack of full length restroom mirror.

13. The inaccessibility of GARLAND HOTEL COMPANY DBA GARLAND HOTEL; UWE WELLHOFER AND ROBERT A PECHOULTRES EXEMPT TRUST to persons with disabilities is illegal, degrading and humiliating.

14. Many of the actions which Defendants failed to make GARLAND HOTEL COMPANY DBA GARLAND HOTEL; UWE WELLHOFER AND ROBERT A PECHOULTRES EXEMPT TRUST accessible to persons with disabilities were readily achievable, required by law and would have greatly assisted persons with disabilities at little expense to Defendants.

15. Because of these barriers, entering this facility was impossible for persons with mobility disabilities, such as the Plaintiffs, to gain access to this facility.

16. California's Unruh Civil Rights Act, Civil Code Section 52(a) reads as follows: Whoever denies, aids or incites a denial, or makes any discrimination or distinction contrary to

1 Section 51, 51.5 or 51.6, is liable for each and every offense for the actual damages, and any
 2 amount that may be determined by a jury, or a court sitting without jury, up to a maximum of
 3 three times the amount of actual damage but in no case less than four thousand dollars
 4 (\$4,000.00), and any attorney's fees that may be determined by the court in addition thereto,
 5 suffered by any person denied the rights provided in Section 51, 51.5, or 51.6. Amended January
 6 1st, 2002.

7 17. The Attorney General of the State of California believes that the former \$1,000.00
 8 damage award is unlikely to have sufficient deterrent effect on the discriminatory practices of a
 9 large company. Defendants may have had hundreds or thousands of transactions that violated
 10 the Americans with Disabilities Act of 1990 and the California's Unruh Civil Rights Act and
 11 which would have unjustly enriched them. Thus, the prospect of paying an occasional four
 12 thousand dollars (\$4,000.00) damage award due to a discriminatory practice may be calculated
 13 as an absorbable cost of doing business. The minimum amount was increased to at least
 14 \$4,000.00. See California's Unruh Civil Rights Act Section 52(a), Amended January 1st, 2002.
 15 This legislation was supported by California Attorney General, Anti-Defamation League and
 16 California School Employees Association.

17 18. The United States Court of Appeals for the Ninth Circuit in Botosan vs. Paul
 18 McNally Realty, 216 F.3rd 827 at 835 (June 20, 2000) held that, "Consumer was entitled to
 19 award of statutory minimum damages under California's Unruh Civil Rights Act, even without
 20 prove of actual damages", and "Proof of actual damages is not prerequisite to recovery of
 21 statutory minimum damages under California's Unruh Civil Rights Act." West's
 22 Ann.Cal.Civ.Code §52.

23 **FIRST CLAIM**

24 (Violation of the Americans With Disabilities Act)

25 19. Plaintiffs incorporate by reference herein the allegations in paragraphs 1-18,
 26 inclusive.
 27
 28

27. The SUBJECT FACILITY constitutes a public accommodation within the meaning of California Civil Code sections 54.1 and 54.3.

28. Defendants have violated Plaintiffs' rights by denying them full and equal access to and use and enjoyment of GARLAND HOTEL COMPANY DBA GARLAND HOTEL; UWE WELLHOFER and in doing so, Defendants have acted willfully and maliciously.

29. Defendants' actions constitute a violation of Plaintiffs' rights under California Civil Code sections 54, et. seq., and therefore, Plaintiffs are entitled to injunctive relief remedying the violations. Plaintiffs are also entitled to damages under California Civil Code section 52(a).

30. Plaintiffs are also entitled to reasonable attorneys' fees and costs.

WHEREFORE, Plaintiffs request relief as set forth below.

THIRD CLAIM

(Violation of Cal. Civ. Code §§51, and §§52(a) et. seq.)

31. Plaintiffs incorporate by reference herein the allegations in paragraphs 1-30 inclusive.

32. The conduct of Defendants is in violation of California Civil Code sections 51, et. seq., the Unruh Civil Rights Act, in that patrons of the SUBJECT FACILITY who have physical disabilities have either not been provided services and facilities that are provided to other persons or have been provided services and facilities that are not equal to, and are inferior to, the services provided to persons who do not have disabilities.

33. Defendants have committed additional violations of the Unruh Civil Rights Act, in that the conduct alleged herein constitutes a violation of various provisions of the ADA, 42 U.S.C. sections 12101, *et. seq.*, as set forth below.

34. The conduct of the Defendants was and is in violation of the Unruh Civil Rights Act, California Civil Code sections 51, et. seq., and therefore Plaintiffs are entitled to injunctive relief remedying the violations. Plaintiffs are also entitled under California Civil Code section 52 to damages.

35. Plaintiffs are also entitled to reasonable attorneys' fees and costs.

1 WHEREFORE, Plaintiffs request relief as set forth below.

2
3 **FOURTH CLAIM**

4 (Violation of Cal. Health &
5 Safety Code §§19955, et. seq.)

6 36. Plaintiffs incorporate by reference herein the allegations in paragraphs 1-35, inclusive.

7 37. The SUBJECT FACILITY is a public accommodation within the meaning of
8 California Health and Safety Code section 19955 and Defendants have constructed and/or altered
9 the SUBJECT FACILITY within the meaning of California Health and Safety Code section
10 19959. The actions of Defendants constitute a denial of access to and use of the SUBJECT
11 FACILITY by persons with physical disabilities.

12 38. Defendants' failure to fulfill its duty to provide access have caused Plaintiffs to suffer
13 injury.

14 39. As a result of Defendants' violation of Health and Safety Code sections 19955, et.
15 seq., described herein, Plaintiffs are entitled to injunctive relief pursuant to Health and Safety
16 Code section 19953.

17 WHEREFORE, Plaintiffs request relief as set forth below.

18
19 **FIFTH CLAIM**
20 **(Negligence)**

21
22 40. Plaintiffs incorporate by reference herein the allegations in paragraphs 1-39,
23 inclusive.

24 41. Defendants had and continue to have a duty to exercise ordinary care.

25 42. Defendants failed, and continue to fail, to exercise ordinary care.

26 43. As an actual and proximate result of Defendants' failure to exercise ordinary care,
27 Plaintiffs suffered damages in an amount to be determined by proof.

28 44. At all times relevant hereto, there was in effect, the Americans With Disabilities Act,
California Civil Code sections 51, et. seq., California Civil Code sections 54, et. seq., and

1 California Health and Safety Code sections 19955, et. seq., all of which have required that
2 public accommodations and facilities provide services to people with disabilities which are
3 equal to, and are not inferior to, the services provided to patrons who are not physically
4 disabled.

5 45. Defendants' acts and omissions alleged herein are in violation of statutory
6 requirements (including, but not limited to, the Americans With Disabilities Act, California
7 Health and Safety Code sections 51, et. seq., and public policy, which statutes are designed to
8 protect persons with disabilities from the type of harm inflicted on Plaintiffs.

9 46. Defendants' conduct thus constitutes negligence and negligence per se.

10 WHEREFORE, Plaintiffs request relief as set forth below.

11 **SIXTH CLAIM**

12 (Declaratory Relief)

13
14 47. Plaintiffs incorporated by reference herein the allegations in paragraph 1-46,
15 inclusive.

16 48. Plaintiffs contend, and are informed and believe that Defendants deny that the
17 SUBJECT FACILITY fails to comply with applicable laws prohibiting discrimination against
18 persons with disabilities and are in violation of statutes including, but not limited to, California
19 Civil Code sections 54, et. seq., California Civil Code sections 51, et. seq., the ADA, and
20 California Health and Safety Code sections 19955, et. seq.

21 49. A judicial declaration is necessary and appropriate at this time in order that each of
22 the parties may know their respective rights and duties and act accordingly.

23 WHEREFORE, Plaintiffs request relief as set forth below.

24 **SEVENTH CLAIM**

25 **(VIOLATION OF CALIFORNIA CIVIL CODE, SECTION §3345, UNFAIR OR**
26 **DECEPTIVE PRACTICES AGAINST SENIOR CITIZENS OR DISABLED PERSONS,**
27 **TREBLE DAMAGES)**

28 50. Plaintiffs incorporate by reference paragraphs 1-49 above.

5. Treble damages pursuant to California Civil Code section 3345;
6. Pre-judgement interest pursuant to section 3291 of the Civil Code;
7. All damages as afforded by Civil Code section 54.3 for which the Defendants have denied to Plaintiffs equal access for the disabled;
8. Plaintiffs' reasonable attorney's fees and costs;
9. Such other and further relief as the Court deems just and proper.

DATED: July 16, 2003

MATTHEW R. YOUNG, Esq.
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Americans With Disabilities
Advocates, RICHARD
WHITEHURST and GEORGE S.
LOUIE

DEMAND FOR JURY TRIAL

PLAINTIFFS hereby demands a jury for all claims for which a jury is permitted.

Dated: July 16, 2003

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